
OLR Bill Analysis

sSB 829

AN ACT CONCERNING THE UNAUTHORIZED PRACTICE OF LAW.

SUMMARY:

This bill generally increases the penalty for the unauthorized practice of law. But the current penalty continues to apply to people admitted as attorneys in other jurisdictions who practice in Connecticut without being authorized to do so.

The bill expands the list of people covered by the unauthorized practice statute, as well as those exempt from it. For example, the bill explicitly exempts someone who is not a Connecticut attorney but who is otherwise permitted to practice here by law or court rules.

The bill adds to the prohibition on unauthorized practice Connecticut attorneys who are then disqualified from practicing for various reasons. But it exempts from prosecution someone suspended from practice solely for failure to pay the attorney occupational tax or client security fund fee and who practices law during that suspension.

The bill provides that, in addition to the activities prohibited by the current unauthorized practice statute (see BACKGROUND), the prohibition also applies to otherwise engaging in the practice of law as defined by statute or Superior Court rules.

The bill also provides that in any prosecution for soliciting, requesting, commanding, importuning, or intentionally aiding in the unauthorized practice of law, or in any prosecution for conspiracy to engage in the unauthorized practice of law, the state must prove, beyond a reasonable doubt, that the defendant knew that the person was not admitted to practice law in any jurisdiction when the violation occurred.

EFFECTIVE DATE: October 1, 2013

UNAUTHORIZED PRACTICE OF LAW

Penalties and Exemptions

The bill generally increases the penalty for the unauthorized practice of law from a class C misdemeanor to a class D felony, which is punishable by up to five years in prison, up to a \$5,000 fine, or both. A class C misdemeanor is punishable by up to three months in prison, up to a \$500 fine, or both.

Under existing law, someone who violates the unauthorized practice statute is also deemed to be in contempt of court, and the court has equitable jurisdiction to restrain violations (i.e., order the person to stop the violation). With the possible exception noted below, these provisions continue to apply under the bill.

Others Authorized by Statute or Court Rule. The bill creates an explicit exemption to the ban on unauthorized practice for people authorized to provide legal services under a statute or Superior Court rule. Such people are exempt from all of the penalties specified above.

Court rules allow attorneys from other jurisdictions to provide legal services here under certain conditions without admission to the state bar. These include attorneys practicing “pro hac vice” (for this occasion only), authorized house counsel, and foreign legal consultants (Ct. Practice Book §§ 2-15A et seq.).

Other Attorneys. The bill keeps the current penalties for a defendant who is not authorized to practice here, as specified above, but who proves, by a preponderance of the evidence, that he or she committed the unlawful acts while an admitted member of good standing of the bar of (1) another state, (2) the District of Columbia, (3) Puerto Rico, (4) a U.S. territory, or (5) a U.S. district court.

Under existing law, the misdemeanor penalty does not apply to attorneys who (1) are admitted members in good standing of the bar of any of the above specified jurisdictions and (2) within the scope of their employment, give legal advice to the employer or its corporate affiliate. But such people are still deemed in contempt of court and the

court can restrain their violation of the statute.

The bill expands this exemption to include someone admitted in good standing to a foreign bar as permitted by Superior Court rules and who meets the other requirements set forth above. Also, such people from any of the above-specified jurisdictions would be exempt from all penalties under the statute if they were authorized house counsel or otherwise permitted by law or court rules to practice here.

Connecticut Attorneys Who are Later Disqualified. The bill includes within the prohibition on unauthorized practice someone who was admitted to the Connecticut bar but is later disqualified from practicing due to resignation, disbarment, suspension, or being placed on inactive status.

Under the bill, someone suspended solely for failure to pay the attorney occupational tax or client security fund fee required by law, and who practices law during that suspension, is exempt from prosecution. It is unclear if the person is also exempt from being held in contempt. Presumably, the court would have jurisdiction to restrain him or her from further violations of the statute.

BACKGROUND

Unauthorized Practice of Law

Subject to the exceptions noted above, existing law prohibits anyone not admitted to the Connecticut bar from:

1. practicing law or appearing as an attorney for anyone else in any court in Connecticut;
2. making it a business to practice law or appear as an attorney for anyone else in any such court;
3. making it a business to solicit employment as an attorney;
4. holding oneself out to the public as being entitled to practice law;
5. assuming the role of an attorney;

6. assuming, using, or advertising the title of lawyer, attorney and counselor-at-law, attorney-at-law, counselor-at-law, attorney, counselor, attorney and counselor, or an equivalent term, in a manner suggesting that he or she is a legal practitioner of law; and
7. advertising that he or she, either alone or with others, owns, conducts, or maintains a place of business of any kind for the practice of law.

Related Bill

HB 5513, reported favorably by the Judiciary Committee, extends the penalties for the unauthorized practice of law to notaries public who are not attorneys and who commit certain acts regarding immigration matters or advertising.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 39 Nay 1 (03/13/2013)